

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH CHARLES,

Plaintiff,

v.

NOTICE OF REMOVAL

Civil Action No.:

LOWE'S OF POUGHKEEPSIE STORE #0541,
LOWE'S HOME CENTERS, LLC, and
LOWE'S HOME CENTERS, INC.,

Defendants.

**TO: United States District Court
Southern District of New York**

Pursuant to 28 U.S.C. §1441 and 1332, the action entitled *Joseph Charles v. Lowe's of Poughkeepsie Store #0541, Lowe's Home Centers, LLC, and Lowe's Home Centers, Inc.*, commenced in the Supreme Court of the State of New York, County of Dutchess, Index Number 2021-52422, is hereby removed by Defendant, Lowe's Home Centers, LLC (incorrectly sued as "Lowe's of Poughkeepsie Store #0541, Lowe's Home Centers, LLC, and Lowe's Home Centers, Inc.") ("Lowe's" or "Defendants"), from the Supreme Court of the State of New York, County of Dutchess to the United States District Court for the Southern District of New York by the filing of this Notice of Removal with the Clerk of the United States District Court for the Southern District of New York.

Lowe's, by and through its attorneys, Goldberg Segalla LLP, respectfully states the following as grounds for removing this action:

Procedural History

1. Plaintiff commenced this action on June 28, 2021 in New York State Supreme Court, Dutchess County. Plaintiff's Summons and Complaint was assigned Index Number 2021-

52422 (the “State Court Action”).

2. The Complaint was served on Lowe’s via the New York Secretary of State on July 2, 2021.

3. Copies of all process, pleadings, and orders served upon the Defendants in the State Court Action are attached hereto as **Exhibit A**.

4. The State Court Action seeks monetary damages for personal injuries allegedly sustained by plaintiff, Joseph Charles, while at the Lowe’s Home Improvement store located at 1941 South Road, Poughkeepsie, New York (“Premises”).

Parties

5. Plaintiff is a resident of Dutchess County, New York.

6. Plaintiff is domiciled in New York and is therefore a citizen of New York for diversity purposes.

7. Defendant is incorporated under the laws of the state of North Carolina and has a principal place of business in North Carolina.

8. More specifically, Lowe’s Home Centers, LLC, is a limited liability company organized under the laws of North Carolina and with a principal place of business at 1000 Lowe’s Boulevard, Mooresville, North Carolina 28117.

9. The sole member of Lowe’s Home Centers, LLC is Lowe’s Companies, Inc.

10. Lowe’s Companies, Inc. was incorporated under the laws of North Carolina and has a principal place of business at 1000 Lowe’s Boulevard, Mooresville, North Carolina 28117.

11. “Lowe’s of Poughkeepsie Store #0541,” although individually named as a defendant in the State Court Action, is not a legal entity.

12. “Lowe’s Home Centers, Inc.,” which was also individually named as a defendant

in the State Court Action, is also not a legal entity.

13. The only viable defendant in this action is Lowe's Home Centers, LLC, whose domicile is North Carolina.

14. Accordingly, full diversity exists between the parties.

Jurisdiction

15. This Court has subject-matter jurisdiction of the action pursuant to 28 U.S.C. § 1332 in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

Basis for Removal

16. This Court has subject-matter jurisdiction on the basis of diversity of citizenship under 28 U.S.C. § 1332. Venue is proper pursuant to 28 U.S.C. § 1441(a) because this is the federal district court for the district embracing the place where the State Court Action is pending.

17. Though the Complaint does not state the amount of damages that will be sought, plaintiff has confirmed in writing that plaintiff's settlement demand, and therefore the amount in controversy, exceeds \$75,000. The parties' correspondence confirming that the amount in controversy exceeds \$75,000 is attached as **Exhibit B**.

18. Lowe's has timely brought this Notice of Removal within 30 days of its receipt of plaintiff's first written confirmation that the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1446(b). Prior to plaintiff's correspondence dated June 28, 2022, Lowe' received no pleading, amended pleading, motion, order, or other paper from which it could ascertain that the case was removable.

19. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon plaintiff, by and through his attorney of record, and is being filed with the Dutchess

County Supreme Court Clerk.

20. No previous application has been made for the relief requested herein.

WHEREFORE, Lowe's files this Notice of Removal so that the entire state court action under Index No. 2021-52422 now pending in New York State Supreme Court, Dutchess County, be removed to this court for all further proceedings.

Dated: Buffalo, New York
June 28, 2022

GOLDBERG SEGALLA LLP

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